



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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JULY 29 2002

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Paper No. 7

In re application of

Mourao et al.

Serial No. 09/692,824

Filed: October 19, 2000

For: METHOD TO INCREASE THE
ADHERENCE OF COATING MATERIALS
ON FERROUS MATERIALS

DECISION ON
PETITION

This is a decision on the PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE AN OFFICE ACTION, filed May 28, 2002, requesting withdrawal of any holding of abandonment which may be issued for failure to response to the Office action of November 9, 2001. Petitioner asserts that the Office action was not received. No actual Notice of Abandonment has as yet been mailed.

DECISION

Since petitioner asserts that the Office action was not received, the request is accepted as a petition under 37 C.F.R. 1.181 (no fee). A review of the evidence provided with the instant petition indicates that the request cannot be granted.

The showing required to establish failure to receive an Office Action must consist of 1) a statement from the practitioner attesting to the fact that the Office Action was not received 2) a statement that a search of the file jacket and docket records was performed and indicates that the Office Action was not received, and 3) copy of the docket record where the nonreceived Office Action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement. See MPEP 711.03(c). Petitioner has indeed satisfied these requirements, yet other evidence of record precludes granting the petition.

This application was filed with a correspondence address of:

Helfgott & Karas, P.C.
Empire State Building, 60th Floor
New York, NY 10118-0110

This address remained unchanged until the instant petition was filed on May 28, 2002, at which time a 'change of correspondence information' was filed which requested that future correspondence be addressed to:

Katten Muchin Zavis Rosenman
575 Madison Avenue
New York, NY 10022-2585

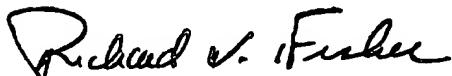
The petition and change of address also include reference to customer number 026304. However, there is no evidence in the record that this application was previously associated with any customer number, or that any attempt to change the correspondence address was made prior to the instant petition. Also, the docket records provided by applicant do not show that any change of address form or similar paper were ever filed. The petition is silent as to when applicant moved from the old to the new address, and is silent as to which address would have been correct as of November 9, 2001, the mailing date of the Office action. On this record, it cannot be positively determined if the Office action was mailed to the correct address and simply not received, mailed to an incorrect address due to an Office error, or mailed to an incorrect address due to applicant's failure to promptly file a change of address, in which case the application is properly abandoned. However, according to Office records, several other applications being handled by petitioner include changes of address dated in the last week of October, 2001.

It thus appears that the Office action was mailed to the old address, still of record, at a time when applicant was located at the new address. Since it is applicant's responsibility to promptly inform the Office of any change of address (see MPEP 601.03), and applicant apparently failed to do so, this application is properly abandoned absent further evidence to the contrary.

Applicant may wish to consider filing a supplemental petition including either evidence of an attempt to change the correspondence address on or before the mailing date of the Office action, or that the old mailing address was correct as of that date.

In the meantime, the case will be forwarded to the examiner for mailing of a Notice of Abandonment.

The Petition is DENIED.



Richard Fisher, Director
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